84-1588

NO.

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IN THE

Supreme Court of the United States

TERM, 1985

TEDDYE DUGGER, PETITIONER

v.

DELTA AIRLINES, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI FROM THE GEORGIA COURT OF APPEALS

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91pp

QUESTION PRESENTED FOR REVIEW

I. Whether Official Code of Georgia Annotated §34-6A-1 et seq, Georgia Equal Employment for the Handicapped Act, when construed and applied to permit an employer to terminate a person who is injured on the job and becomes handicapped without allowing said person to bid for another job position where the employer has established intra-company job transfer procedures for all employees, is a denial of a handicapped person's rights to equal protection under the Fourteenth Amendment to the United States Constitution.

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OPINION

The Superior Court of Fulton County, Georgia on October 14, 1983, Civil Action File No. C-89198, granted Summary Judgment to the Defendant.

The Georgia Court of Appeals on November 15, 1984, Case No. 68534, affirmed the ruling of the Superior Court of Fulton County, Georgia.

The Georgia Court of Appeals on December 10, 1984, Case No. 68534, denied the Appellant's Motion for Reconsideration.

The Supreme Court of Georgia on January 10, 1985, Case No. 41867, denied the Appellant's Petition for Writ of Certiorari.

JURISDICTION

The judgment of the Georgia Court of Appeals was entered on November 15, 1984. A timely Motion for Reconsideration was filed on November 26, 1984. On December 10, 1984 the Georgia Court of Appeals denied the Appellant's Motion for Reconsideration. On December 27, 1984 the Appellant filed a Petition for Certiorari to the Supreme Court of Georgia which was denied on Janaury 10, 1985.

This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

STATUTORY PROVISIONS INVOLVED

Official Code of Georgia Annotated §34-6A-4. Georgia Equal Employment for the Handicapped Code.

Refusal to hire, discharge of, discrimination, etc, against handicapped individuals; refusal to refer handicapped individuals for employment; discrimination by labor organizations; discrimination in training programs; discrimination in advertisements for employment.

(a) No employer shall fail or refuse to hire, discharge, or discriminate against any handicapped individual with respect to wages, rates of pay, hours or other terms and conditions of employment because of such person's handicap unless such handicap restricts that individual's ability to engage in the particular job or occupation for which he or she is eligible; nor shall any employer limit, segregate, or classify handicapped individuals in any way which would deprive or tend to deprive any handicapped individual of employment opportunities or otherwise affect employee status because of such person's handicap, unless such handicap constitutes a bona fide and necessary reason for such limitation, segregation,

or classification. This subsection shall not be construed to require any employer to modify his physical facilities or grounds in any wayor exercise a higher degree of caution for a handicapped individual than for any person who is not a handicapped individual, nor shall this subsection be construed to prohibit otherwise lawful employment practices or requirements merely because such practices or requirements affect a greater proportion of handicapped than nonhandicapped individuals within the area from which the employer customarily hires his employees.

(b) No employment agency, placement service, training school or center, or labor organization shall fail or refuse to refer for employment or otherwise discriminate against individuals because of their handicap.

(c) No labor organization shall exclude or expel from its membership or otherwise disriminate against individuals because of their handicap; nor shall a labor organization limit, segregate, or classify its membership or classify or fail or refuse to refer for employment any handicapped individual in any way which would deprive or tend to deprive any handicapped individual of employment opportunities, would otherwise affectsuch person's employee status or employment applicant status, or would adversely affect such person's wages, hours, or conditions of employment

because of such person's handicap.

(d) No employer, labor organization, or joint labor-management committee controlling apprenticeship programs or other training or retraining, including on-the-job training programs, shall discriminate against any individual because of such individual's handicap, in the admission to or the employment in any program established to provide apprenticeship or other training.

(e) It is discrimination for an employer to print or publish or cause to be printed or published a notice or advertisement relating to employment by such employer, which advertisement or notice indicates any preference, limitation, specification, or discrimination based on handicap, except that such notice or advertisement may indicate a limitation or specification based upon handicap if the criteria is job related. (Code 1933, §66-504, enacted by Ga. L. 1981, p. 1803, §2.)

Fourteenth Amendment to the United States Constitution:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The plaintiff/appellant was originally employed by the defendant company in November of 1965 as a flight attendant. During the course of her employment she sustained two (2) on-the-job back injuries wherein she was placed on worker's compensation for an extended period of time. As the result of said injuries the plaintiff/appellant became handicapped as defined in O.C.G.A., §34-6A-2, and was unable to return to her position as a flight attendant.

At the time the plaintiff/apellant was released to return to work the defendant company had a written policy which allowed all employees the opportunity to bid for job

openings within the corporate structure, extended sick leave policies and retraining programs. The plaintiff/appellant was not given an opportunity to review and bid for current job openings within the corporate structure and was told if she did not accept a reservations clerk position, in an area referred to as "sick bay", at a lower rate of pay, she would be terminated.

Under threat of termination, the plaintiff/appellant accepted the reservation clerk position and, subsequently, twelve (12) days later was terminated for excessive absenteeism. The plaintiff/appellant had been an employee of the defendant for sixteen and one-half (16 1/2) years.

On July 13, 1982,

plaintiff/appellant filed this action alleging violations of the Georgia Equal Employment for the Handicapped Act, O.C.G.A., §34-6A-1, et seq, in that she was discriminated against because of her handicap basing said act of discrimination on the fact that she was not given an opportunity to bid for other job openings within the corporate structure for which she was eligible, not given an opportunity to procure extended sick leave and not given an opportunity for retraining, employment opportunities given to non-handicapped employees.

Discovery was initiated and the defendant refused to produce information which would prove that the defendant company denied to the plaintiff/appellant equal employment

opportunities. A Motion to Compel was filed by the plaintiff/appellant and prior to ruling on said Motion the Superior Court of Fulton County on October 14, 1983 granted Summary Judgment to the defendant, interpreting O.C.G.A. §34-6A-4(a) as not requiring the employer to consider a handicapped individual for each and every position that she may be arguably qualified to fill.

From the inception of this case the plaintiff/appellant has contended, via complaint, Motions to Compel, Response to Defendant's Motion for Summary Judgment, Appeal to the Georgia Court of Appeals, Motion for Rehearing and Petition for Certiorari to the Supreme Court of Georgia, that she was being denied equal protection of the

law.

The decision of the Georgia Court of Appeals is, on its face, denying to the handicapped employees of the State of Georgia the same employment opportunities as non-handicapped emplyees.

Specifically, the Georgia Court of Appeals held that if a person is injured on the job, and becomes handicapped as a result of said injury and can no longer perform the job he was doing at the time of the injury, that the employer, who has established intra-company job transfers for non-handicapped employees, is under no obligation to allow that person an opportunity to bid for another position within the company which he may be eligible to fill.

The Supreme Court of Georgia refused to grant Certiorari.

REASONS FOR GRANTING THE WRIT

1. The question sought to be reviewed is one of general importance to all handicapped persons in the State of Georgia and the United States.

If the decision of the Georgia Court of Appeals in the case at bar is allowed to stand, handicapped persons in the State of Georgia will be denied the same employment opportunities as non-handicapped individuals.

The Georgia Court of Appeals in its decision in the case at bar on first impression interpreted O.C.G.A. §34-6A-4 as a balancing of interests of society in providing an opportunity for handicapped people to work, and the interests of the employer to maintain freedom to hire and maintain employees who can best perform the duties of a

particular job.

There can be no question that the interest of an employer to maintain freedom to hire and maintain employees who can best perform the duties of a particular job is a valid consideration, however, where the employer provides intra-company job transfers to non-handicapped employees and the handicapped employee may be "eligible" to perform the duties of a different job than the particular job he held at the time he was injured and became handicapped, the interests of society in providing an opportunity for handicapped persons to work mandates the handicapped person be given equal employment opportunities.

The Georgia Court of Appeals by it's decision in the case at bar is

allowing employers of the State of Georgia to use a person's body until it becomes "mangled and worn" and then discard the "mangled and worn" body if he can no longer perform the job he had at the time of the injury, thereby disallowing him the same employment opportunities as non-handicapped employees.

The plaintiff/appellant was not in the lower Court and is not in this Court asking that the Courts mandate that the employers of the State of Georgia exercise a greater degree of caution in regard to handicapped people, she is merely asking the Court to guarantee to handicapped persons equal employment opportunities to enable the handicapped individuals the fullest participation in the social and economic

life of this country and their right to engage in remunerative employment.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Georgia Court of Appeals.

Respectfully submitted,

SONJA L. SALO
ATTORNEY FOR
PLAINTIFF/APPELLANT

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STATE OF GEORGIA

COUNTY OF FULTON

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a true copy of the within and foregoing Petition for Writ of Certiorari to the United States Supreme Court upon Hunter Hughes, Esq., by depositing same in the United States Mail in an envelope with sufficient postage thereon and properly addressed as follows:

Hunter Hughes, Esq.
Rogers & Hardin
32nd Floor
101 Marietta Tower
Atlanta, Ga. 30335

Gregory Riggs, Esq.
Delta Airlines, Inc.
Law Department
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30335

This the 16th day of April, 1985.

SONJA L. SALO

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APPENDIX

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

TEDDYE DUGGER,	§	CIVIL ACTION
	§	
Plaintiff,	§	CASE NO. C-89198
	§	
vs.	§	
	§	
DELTA AIR LINES, INC.,	§	
	§	
	§	
Defendant.	§	

O R D E R

The within and foregoing MOTION FOR SUMMARY JUDGMENT has been brought before this court by defendant DELTA AIR LINES, INC.

After hearing the motion and considering the argument of counsel and reviewing all appropriate material, the court finds as follows:

Plaintiff was originally employed by defendant in November 1965 as a flight attendant.

CIVIL ACTION

CASE NO. C-89198

On March 10, 1979 plaintiff suffered a back injury while in the course of her employment.

On November 10, 1980 plaintiff reinjured her back while riding in a limousine resulting in the loss of 76 working days in 1980, 365 working days in 1981 and 105 working days up to April 1982.

Since plaintiff was determined to be physically unable to resume her duties as flight attendant defendant offered plaintiff the position of Reservations Clerk indicating refusal to accept the position would ultimately led to plaintiff's termination.

Plaintiff returned to work on April 15 as a Reservations Clerk.

Defendant shows that a work station was set up for plaintiff to allow her to work while either standing or sitting and that plaintiff was further authorized to lie down for up to 1 3/4 hours each day.

Defendant further shows that by 2:00 p.m. on each working day plaintiff was in substantial pain.

On April 27, 1982 plaintiff was asked to resign due to poor dependability; upon plaintiff's refusal to resign her employment was terminated.

Defendant shows that at the time of her termination, plaintiff was physically unable to perform her job.

Plaintiff was subsequently adjudged totally disabled at the time of discharge by the State Board of Workers Compensation.

Plaintiff filed her complaint claiming that her termination was in violation of the Georgia Equal Employment for the handicap code, O.C.G.A. 34-6A-1.

Defendant asks the court to grant the subject motion on the grounds that plaintiff has no claim under the Georgia Equal Employment for the Handicapped Code.

The only issues of fact material to a resolution the present motion involves facts relevant to defendant's compliance with the handicap statute.

CIVIL ACTION

CASE NO. C-89198

According to O.C.G.A. 34-6A-4(a) no employer shall ... discharge ... any handicapped individual ... because of such person's handicap unless such handicap restricts that individuals ability to engage in the particular job or occupation for which he or she is eligible ... nor shall this subsection be construed to prohibit otherwise lawful employment practices or requirements merely because such practices or requirements affect a greater proportion of handicapped that non-handicapped individuals".

This statute clearly allows an employer to discharge an individual because of his handicap if that handicap restricts the ability to engage in

the particular job for which the individual i eligible. The plaintiff has cited as a disputed issue whether there were other positions within defendant company which plaintiff could perform. Such an issue is not material to the case and therefore need not be considered by the court in regard to the subject motion. The defendant's contention as to other issues not directly related to the requirement of the statute are similarly without merit. The only factual issue material to the case involve whether in fact the plaintiff's ability to perform was restricted as to the particular job in question.

Plaintiff contends that there is a material issue of fact as to whether she was physically capable of performing "a job for which she was eligible". However plaintiff has substantially misstated the issue since the statute required that the individual be capable of performing "the particular job or occupation for which he or she is eligible" rather than "a job" as plaintiff has stated. The distinction is significant since the statute does not require the employer to consider the handicap individual for each and every position that he may arguably be qualified to fill; the statute only seeks to prohibit action by the employer against the handicapped where the employees

handicap does not restrict her ability to perform the specific job for which she is eligible.

Upon consideration of the relevant facts, the court concludes that there is no issue of material fact in this case. The law governing this case as set forth in O.C.G.A. 34-6A-4(a) requires a determination as to whether the facts demonstrate that plaintiff's handicap restricted her ability to do the particular job in question. Defendant has shown by plaintiff's deposition that plaintiff's condition did in fact severely restrict her ability to perform her particular job assignment. In the absence of some showing to the contrary, the court must conclude that

plaintiff's condition did substantially restrict her ability to perform her job and therefore, that defendant's discharge of plaintiff was not in violation of the Georgia Equal Employment for the Handicapped Code, O.C.G.A. 34-6A-1.

THEREFORE, defendant's MOTION FOR SUMMARY JUDGMENT is hereby granted.

This the 14th day of Oct., 1983.

ISAAC JENRETTE
JUDGE SUPERIOR COURT
ATLANTA JUDICIAL CIRCUIT

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CIVIL ACTION

CASE NO. C-89198

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GEORGIA COURT OF APPEALS

68534. DUGGER v. DELTA AIR LINES, INC.

P-114

POPE, Judge.

Appellant Teddye Dugger brought suit against appellee Delta Air Lines, Inc., her former employer, alleging that Delta had violated the Georgia Equal Employment for the Handicapped Code, OCGA Ch. 34-6A. She claimed that Delta had discriminated against her by discharging her because of her handi-

cap. After a period of discovery, Delta moved for summary judgment which was granted by the trial court.

The record shows that Dugger had been employed by Delta for a number of years as a flight attendant. Dugger injured her back on the job in March 1979 and reinjured it in work-related activity in November 1980. As a result of these injuries, Dugger missed work for approximately the next year and a half. During this period Dugger received workers' compensation benefits, medical payments, accident pay, sick pay, vacation pay, and supplemental disability payments from Delta, the total of which exceeded $45,000. When it became apparent that Dugger was, and for the foreseeable future would be, unable to resume her duties as a flight attendant, Delta offered her a position

as a reservations clerk. Although reservations clerks ordinarily perform their duties while seated and work a routine eight-hour day, Delta made the following arrangements to accommodate Dugger's physical disability. Dugger's work station was arranged so that she could perform the job while sitting or while standing in order to decrease the fatigue and pain caused by her injured back. In addition, Dugger was given permission to use a bed provided by Delta to lie down for up to 1-3/4 hours per work day. During the eight days Dugger was employed as a reservations clerk, she missed four days due to illness and appointments associated with her back injury. She testified that by 2:00 p.m. of each day she worked, she was in extreme pain. She further testified that at the time she

held the reservations clerk job she felt she was totally disabled from working in the position.

OCGA § 34-6A-4(a) reads as follows:

"No employer shall fail or refuse to hire, discharge, or discriminate against any handicapped individual with respect to wages, rates of pay, hours, or other terms and conditions of employment because of such person's handicap unless such handicap restricts that individual's ability to engage in the particular job or occupation for which he or she is eligible; nor shall any employer limit, segregate, or classify handicapped individuals in any way which would deprive or tend to deprive any handicapped individual of employment opportunities or otherwise effect employee status because of such

person's handicap, unless such handicap constitutes a bona fide and necessary reason for such limitation, segregation, or classification. This subsection shall not be construed to require any employer to modify his physical facilities or grounds in any way or exercise a higher degree of caution for a handicapped individual than for any person who is not a handicapped individual, nor shall this subsection be construed to prohibit otherwise lawful employment practices or requirements merely because such practices or requirements affect a greater proportion of handicapped than nonhandicapped individuals within the area from which the employer customarily hires his employees." It is this statute which Dugger alleges Delta violated in discharging her from the job as a reserva-

tions clerk. Dugger alleges that Delta had a duty under the statute to provide her with the opportunity to select another job within Delta for which she was eligible. She contends that such jobs exist and that she was and is eligible to fill them. We find several problems with this reading of the statute and with her contentions in conjunction with the facts in the record.

The statute is obviously a balancing of the interests of society in providing an opportunity for handicapped people to work, and the interests of employers to maintain the freedom to hire and maintain employees who can best perform the duties of a particular job. Employers are not required to modify facilities or to exercise a greater degree of caution in

discharge was simply the result of the handicap uncoupled with inability to do that particular job.

The record before us shows that Dugger could not perform consistently in the job of reservations clerk because of her persistent back pain, in spite of Delta's modification of her work station and other accommodations voluntarily made by Delta. On the record before us, we find that Delta did not violate OCGA § 34-6A-4(a) in discharging Dugger. Although Dugger claims that Delta discriminated against her by not allowing her additional sick leave, or to bid on other jobs or an opportunity to train for a different job, she has produced no evidence to rebut Delta's evidence that she was treated in the same manner as any other Delta employee would be under the same

regard to a handicapped worker than would be done for an able-bodied worker. An employer simply must not discriminate in employment decisions unless the person's handicap restricts his or her "ability to engage in the particular job or occupation for which he or she is eligible." An employer is not required under this law to hire or maintain a person who cannot perform the duties of the job because of that person's handicap. In a case such as the one at bar, which involves discharge, the word "eligible" in the statute must necessarily refer to the particular job held by the individual before discharge. Thus, the material issue to be determined is whether the individual was discharged because of an inability to perform the job held as a result of the handicap, or whether the

circumstances. "When a motion for summary judgment is submitted and supported by evidence, the adverse party may not rest his case as made but must set forth specific facts and present his case in full in order to show there is a genuine issue of trial. [Cits.]" Alghita v. Universal Investment & Mfg. Co., 167 Ga. App. 562, 566-567 (307 SE2d 99)(1983). Therefore, we find that the trial court did not err in granting summary judgment to Delta.

Judgment affirmed. Banke, P. J., and Benham, J., concur.

IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

TEDDYE DUGGER,	§	
	§	
Plaintiff/	§	
Appellant,	§	
	§	
vs.	§	CASE NO.: 68534
	§	
DELTA AIR LINES,	§	
INC.,	§	
	§	
Defendant/	§	
Appellee.	§	

MOTION FOR REHEARING

COMES NOW the Appellant, in the above styled case, by and through her attorney, Sonja L. Salo, pursuant to Rule 48 of the Rules of the Court of Appeals of the State of Georgia, and moves this Honorable Court to reconsider the decision entered on November 15, 1984. The Appellant states that the Court has overlooked a material fact, and erroneously construed

O.C.G.A. §34-6A. In support thereof the Applicant attaches a Brief in Support of Motion for Rehearing.

WHEREFORE, the Appellant Prays to this Honorable Court to grant the Appellant's Motion for Rehearing and reconsider their decision based on the Brief and evidence filed and the attached Brief.

Respectfully Submitted,

_____

SONJA L. SALO
ATTORNEY FOR APPELLANT

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Atlanta, Georgia 30303
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IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

TEDDYE DUGGER,	§	
	§	
Plaintiff/	§	
Appellant,	§	
	§	
vs.	§	CASE NO.: 68534
	§	
DELTA AIR LINES, INC.,	§	
	§	
	§	
Defendant/	§	
Appellee.	§	

CERTIFICATE OF COUNSEL

Counsel for the Plaintiff/Appellant certifies to this Court that after careful examination of the opinion of this Court rendered on November 15, 1984 in the above styled case, counsel believes that a fact was overlooked by this Court and the Court erroneously

construed and misapplied O.C.G.A. §34-6A to the facts of this case.

SONJA L. SALO

Sworn to and Subscribed
Before Me this 26th day
of Nov. 1984.

NOTARY PUBLIC

IN THE GEORGIA COURT OF APPEALS
STATE OF GEORGIA

TEDDYE DUGGER,	§	
	§	
Plaintiff/	§	
Appellant,	§	
	§	
vs.	§	CASE NO.: 68534
	§	
DELTA AIR LINES,	§	
INC.,	§	
	§	
Defendant/	§	
Appellee.	§	

PLAINTIFF/APPELLANT'S BRIEF
IN SUPPORT OF MOTION FOR REHEARING

I. THE APPELLANT COURT HAS OVERLOOKED A MATERIAL FACT.

In this Court's Opinion of November 15, 1984, the Court has stated that the material issue to be determined, where it has been alleged that the Defendant violated O.C.G.A. § 34-6A et seq., is "whether the individual was discharged because of an inability to perform the job held as a result of the

handicap, or whether the discharge was simply the result of the handicap uncoupled with the inability to do the particular job."

This case came before the Georgia Court of Appeals on an appeal based on the lower Court granting the Defendant's Motion for Summary Judgment. In relying on a Motion for Summary Judgment, the Court does not try the case but merely determines from the record whether there are any genuine issues of fact. Flander v. Columbia Nitrogen Corp., 135 Ga. App. 21, 217 SE 2d 363 (1975). Any doubt must be resolved in favor of the respondent, Boston Inc. Co. v. Barnes, 120 App. 585, 171 SE 2d 626 (1969), even if the respondent would have the burden of proof at trial. Whitehead v. Capital Auto Co., 239 Ga. 640, 238 SE 2d 104 (1977).

Major issues as to the Plaintiff/ Appellant's physical condition at the time of her termination, whether she was classified or segregated in any way which would tend to deprive her of employment opportunities to affect her employee status because of her handicap, and whether she was given the same treatment as non-handicapped individuals still remain on this case.

In the "Plaintiff's Reply to Defendant's Reply to Plaintiff's Response to Defendant's Motion for Summary Judgment", the Plaintiff/ Appellant submitted evidence to the lower Court, exhibit A, which was a portion of testimony given by Pauline Collier, Reservations Clerk Supervisor for Delta Airlines (Attached hereto for the Court's convenience) wherein Pauline Collier stated that there are

minimum standards of productivity and that the Plaintiff/Appellant was one of the best ones she had regardless of the fact she (Plaintiff) was in excruciating pain.

In Plaintiff's Brief in Response and Opposition to Defendant's Motion for Summary Judgment, exhibit 2, Dr. C. David Scheibert, neurologist, (Attached hereto for the Court's convenience) indicates that she was capable of working and her work activity would increase within 2 months.

ISSUE OF FACT: Was the Plaintiff/Appellant terminated because she could not perform the job as a reservations clerk, or was she terminated because she was a handicapped individual uncoupled with her ability to perform the job?

In the opinion written by this Court, the Court has stated that the Plaintiff/Appellant has produced no evidence to rebut Delta's evidence that she was treated in the same manner as any other Delta employee would be under the same circumstances, therein defeating her claim that she was discriminated against by not allowing her additional sick leave, or to bid on other jobs or an opportunity to train for a different job. The Court further stated that there was a "period of discovery" prior to Delta moving for Summary Judgment and when a Motion for Summary Judgment is submitted and supported by evidence, the adverse party may not rest his case as made but must set forth specific facts and present his case in full in order to show there is a genuine issue of trial.

Prior to the Defendant filing a Motion for Summary Judgment, on or about March 3, 1983, the Plaintiff/ Appellant filed Requests for Production of Documents, (Attached hereto for the Court's convenience) wherein the Plaintiff/Appellant, among other things, requested that the Defendant produce the "Standard Practice Handbook" which would be used as evidence to show disparate treatment in that non-handicapped employees were allowed certain sick leave, bidding rights and additional job training. The Defendant, on or about the 5th day of April, 1983 filed their objections claiming that the documents requested were irrelevant to the subject matter of this section. (Attached hereto for the Court's convenience).

On May 9, 1983 the Plaintiff filed a Motion to Compel. Prior to the lower Court ruling on the Plaintiff's Motion to Compel, the Defendant filed his Motion for Summary Judgment and the Court granted same on October 14, 1983 without ruling on the Plaintiff's Motion tc Compel.

O.C.G.A. §15-6-21(b) states:

TIME FOR DECIDING MOTIONS; FILING AND NOTIFICATION; NONCOMPLIANCE GROUNDS OF IMPEACHMENT:

In all counties with more than 100,000 inhabitants, it shall be the duty of the judge of the superior, state, or city court, unless providentially hindered or unless counsel for the Plaintiff and the Defendant agree

> in writing to extend the time, to decide promptly, within 90 days after the same have been argued before him or submitted to him without argument, all Motions for new trial, injunctions, demurrers, and all other motions of any nature.

Had the lower Court ruled on the Plaintiff/Appellant's Motion to Compel holding that the material sought was "not relevant", then the lower Court would have been reversed by this Court as the evidence is in fact relevant to the determination of disparate treatment. Had the lower Court ruled on the Plaintiff/Appellant's Motion to Compel holding that the material sought was in fact relevant, then the Plaintiff/

Appellant could have submitted to the Court additional evidence to raise a material issues of fact.

The Plaintiff/Appellant is caught in a position where one Court, contrary to the laws of the State of Georgia, has failed to rule on a Motion to Compel and now this Court is using the lower Court's refusal to act against the Plaintiff/Appellant as a basis to affirm the granting of the Defendant's Motion for Summary Judgment. Have the scales of justice become so unbalanced?

Because we do not have before us the "Standard Practice Handbook" which would show the number of sick days given employees, the sick leave procedures, whether an employee is suspended prior to termination, whether an employee may bid or retrain for other positions, whether the Reservations

Clerk Department is in fact a "sick bay" used to segregate ill and handicapped employees, there is no way to make a determination as to whether the Plaintiff/Appellant was treated in the same manner as non-handicapped employees under the same circumstances.

The Court's failure to rule on the Plaintiff/Appellant's Motion to Compel, coupled with the statement of the Plaintiff/Appellant's supervisor, surely indicate issues of fact as to whether the Plaintiff/Appellant was discharged because of an inability to perform the job held as a result of the handicap, or whether the discharge was simply the result of the handicap uncoupled with the inability to do that particular job.

II. THE APPELLANT COURT HAS ERRONEOUSLY CONSTRUED O.C.G.A. §34-6A et seq.

This Court had held that an employer is not required under O.C.G.A. §36-6A et seq. to hire or maintain a person who cannot perform the duties of the job because of that person's handicap, and that the word "eligible" refers to the particular job held by the individual before discharge. However, in this same opinion this Court has stated that O.C.G.A. §34-6A et seq. is obviously a balancing of interests of society in providing an opportunity for handicapped people to work, and the interests of employers to maintain the freedom to hire and maintain employees who can best perform the duties of a particular job.

There can be no question under that theory that an employer should not be straddled with an employee who becomes "mangled and worn", however, the purpose and intent of O.C.G.A. §34-6A et seq. is to guarantee to the handicapped individuals the fullest participation in the social and economic life of the state and to guarantee their right to engage in remunerative employment. The very basis of the Georgia Equal Employment Opportunity for the Handicapped Act is to provide <u>equal</u> treatment for the handicapped. Where a corporation provides job transfers to all non-handicapped employees who wish to change jobs within the corporate structure, then to deny a handicapped person the same

opportunities is on its face discrimination and in direct violation of O.C.G.A. §34-6A et seq.

In the case at bar, the Plaintiff/Appellant was not requesting that facilities be modified or that the Defendant exercise a greater degree of caution in regard to her than non-handicapped employees.

By interpreting O.C.G.A. §34-6A et seq., as stated in this Court's opinion of November 15, 1984, the Court is not only allowing an employer to use a person's body until it becomes mangled and worn and discard that person like an old shoe, but they are also fostering employment practices which allow employers of this state to provide greater benefits to non-handicapped

employees than are provided to handicapped employees. Again, have the scales of justice become so unbalanced?

WHEREFORE, based on the foregoing argument, the Plaintiff/Appellant Prays that this Honorable Court reconsider their decision of November 15, 1984, reverse the Trial Court and remand the case for trial.

Respectfully Submitted,

SONJA L. SALO
ATTORNEY FOR APPELLANT

Suite 970, Sussex Place
148 International Blvd.
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a true copy of the within and foregoing Motion for Rehearing with Brief in Support thereof upon Hunter Hughes, Esq., by depositing same in the United States Mail in an envelope with sufficient postage thereon and properly addressed as follows:

Hunter Hughes, Esq.
Rogers and Hardin
32nd Floor
101 Marietta Tower
Atlanta, Georgia 30335

This the 26th day of Nov., 1984.

SONJA L. SA[illegible]

Suite 970, Sussex Place
148 International Blvd.
Atlanta, Georgia 30303

Feb. 10, 1982

Wausau Ins. Companies
P.O. Box 105067
Atlanta, Ga. 30348
ATTN: Linda Lee

RE: Teddye J. Dugger
Delta Airlines, Inc.
Accident Date: Nov. 10, 1980
Claim Number: D66-147502

Dear Ms. Lee,

Ms. Teddye Dugger has stated that she had a past fall and another episode of low back pain some years before her present problem and further details may be obtained from her. From her history there was no lasting problem nor any known impairment or subsequent difficulty until the onset of her problem while working with Delta Airlines.

Since seen on Jan. 18, 1982 Ms. Dugger has announced that she wishes to return to work with Delta Airlines on or about Feb. 15, 1982.

In consideration of her illness and present neurological state it is felt that her medical impairment of the body as a whole is approximately 10%.

It has been stated in December and January 1982 that it is felt that this patient is capable of light work activity and this would be presumed to mean lifting in proper position limited to 20 pounds weight for the next 1 to 2 months followed by a gradual increase

to lifting in proper position without flexing the back up to as much as 40 pounds if required but not on a repetitive basis. In addition, the patient has done well as far as maintaining a more normal weight and will continue to avoid flexion of the back. She is also to remain on a walking and exercise program. The patient also states that she is at this time able to be in an active state for approximately 4 to 5 hours at which time she has increasing discomfort as previously noted. This responds well to a short rest period of 1/2 hour to 45 minutes according to her statement and she can then continue a second 4 hour period of activity. With this information you and Delta Airlines can decide whether or not she can function in a capacity that is of service to them. It is anticipated that with the passage of one to two months that the patient will be able to increase work activity with lifting limited in proper position to 40 pounds as noted above. There are no other suggestions at this time and it is felt that this framework will allow decision as to the patient's work position and

RE: Teddye J. Dugger

hopefully ability to progress to moderate activity as described.

Sincerely,

C. David Scheibert, M.D.

CDS/lc
cc: Delta Airlines
Dr. John Johnson
Atty. Richard Lodge

mail? Are there any numbers that you deal with in what you expect your people to do?

A Yes, sir; there are minimum standards of productivity.

Q How did she do?

A She was one of the best ones I had.

Q Did she complain about any pain while she was on the job?

A Yes, she did tell me about excruciating pain she was experiencing.

MR. McDONALD: That's all I have.

CROSS-EXAMINATION

BY MS. SALO:

Q Ms. Collier, you stated she indicated on April the 15th, 1982 that she was not prepared to work that day?

A Yes.

Q Was she to report to work that day?

A I have no idea. Ms. Dugger advised me that she did not come to work, she came for an interview or she came to try to see one of our vice-presidents. She had no idea that she was going to be assigned to work that day.

Q When were you notified by anyone with Delta that she was to work for you?

A That day after she arrived.

Q She had come to your office prior to your receiving any

EXHIBIT "A"

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

TEDDYE DUGGAR,	:	
	:	
Plaintiff,	:	CIVIL ACTION FILE
	:	
vs.	:	NO. C-89198
	:	
DELTA AIR LINES, INC.,	:	
	:	
Defendant.	:	

PLAINTIFF'S SECOND AND CONTINUING REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Georgia Civil Practices Act, the plaintiff, Teddye Dugger (hereinafter referred to as "Dugger") hereby requests that the defendant, Delta Airlines, Inc. (hereinafter referred to as "Delta"), produce the following documents at 10:00 a.m., on the 11th day of April, 1983, for inspection and copying at the offices of Sonja L. Salo, Suite 970,

Sussex Place, 148 International Boulevard, Atlanta, Georgia 30303, or at such other place and time as may be mutually agreed upon by counsel.

This Request for Production of Documents shall be deemed continuing to the fullest extent permitted by the Georgia Civil Practices Act.

DEFINITIONS

1. As used herein, the "plaintiff" shall mean Teddye Dugger, her agents, representatives, attorneys and assigns.

2. As used herein, "defendant" refers to Delta Airlines, Inc., its officers, directors, employees, agents, representatives and attorneys.

3. As used herein, "person" shall mean any individual, firm, partnership, corporation, proprietorship, govern-

mental body or entity, business association or other entity or organization.

4. As used herein, "document" shall mean any tangible thing in or upon which information is or may be stored or transmitted, including without limitation any book, letter, memorandum, report, inter- or intra-office communication, working paper, draft, tape, disk or other data of any kind or description.

DOCUMENTS TO BE PRODUCED

1.

Any and all written memoranda from any department head within the Delta corporation to the Delta Personnel Department in reference to job openings within the respective departments from August, 1981 to April 15, 1982.

2.

"Job Openings Bulletins" from August, 1981 to April 15, 1982.

3.

Titles and descriptions of all job openings within the Delta Corporation from August, 1981 to April 15, 1982.

4.

Any and all correspondence between Employee Services and Department Heads, Employment and the Manager of Equal Opportunity, stating whether a particular job opening during August 1981 to April 15, 1982 should be open for bid.

5.

All bids submitted by employees for job openings from August, 1981 to April 15, 1982.

6.

Copies of any and all tests administered to applicants for employment or administered to employees seeking or under consideration for transfer from August, 1981 to April 15, 1982.

7.

Employee files for the following:

Lavern R. Rukensall
Rubin J. Jordan
Cornelius Hill
John Evers
Ann Benguria
Carl Fowler
Catherine Copeland
Reba Nash
Julius Bryan
Marc Gahala
Amly McCure
Gail Rollins
Denise Dixon
Carlos Armstead
Gary Hamilton
Dawn Zormeier
Kevin Gooding
Thomas R. Carnal
Richard Connor
James V. Wiggins
Sheryl Wilson
Tricia McGill
Deborah Harkness
Jerome Moore

Treslie Dixon
Ronald Jones
Cynthia Schiller
Claudia Morgan
Virginia Brent
Theodore B. King
Gary L. Meade
Celic F. Doyle
Leon Smith
Cynthia Cochrane
Judy Ott
Patsy Yancey
Lucic Callahan
Edward Robinson
Harry Curtis
Wayne Newell
Cathy Adams
Luther Young
Edgar Boone
Cheryle Beals
Erick Tautzenhiser
Norman King
Cynthia Brown
Patricia Phillips
Ann Pullen
Brian Alford
John Eivers
Kathleen Dillon
Cherisse E. Means
Terri C. Tee
Debra Wonder
Dorothy Dollar
Albertis Timmons
Michelle Broome
Eric Hartenstein
Deborah Tisdale
Marvin Yates
Teri Christian
Kathy Dykes
William E. Mielke
L. C. Jackson
Samuel Mattson

Jenc Mullin
Lovi Wilson
Claire Joyce
Natalie Ghanatchis
George Cooper
Gloria Davis
Marcia Norwicki
Joseph Porter
Barbara Dale
Rollie Smith
Carlos Walladores
William C. Norris
Janette Hart
Franklin Bussey
Vickie Mason
David Hunter
Carlyss Conners
Holly Bennett
Philip Culotta
Vincent Cinguemoni
Jon Ellsworth
Siglinde Jackson
Vansita Anthony
Robert Farley
Cynthia Brown
Hughey Billups
Ann Hammonds
Benjamin McFelding
Kathy Dicorte
Lou Goldstein
Tom Montayre
Cris Frauley
Sue Wammock
Corlyss Connors
Charles Gardner
Siglinda Jackson
Sandra Noojin
Billie Anderson
Louise Pelicone
Eric Johnson
Olivia Sange
Bruce Carter

Elaine Ludwiczck
Joyce Grundon
Robert T. Hancock
Charlene Pickett
Card Williams
Gary D. Nicholson
Carolyn Gilmore
Evelyn C. Thomas
Karen Nance
Cyunthia Anderson
Willie F. Russell
James H. Rogers
Ronald Nall
Stephanie Speir
Pamela Parker
Edward O'Hearn
Wenita DeSpot
Marian Wells
Joe Vance
Donna Crane
Steve Daniels
Teddye Dugger

8.

A copy of Delta's Affirmative Action Plan for the handicapped.

9.

A list of all job openings within Delta Corporation not otherwise listed under the Job Openings Bulletin from August, 1981 to April 15, 1982.

10.

Any and all documentation reflecting criteria for obtaining leave of absence for personal reasons or physical reasons.

11.

Flight Attendant Handbook.

12.

Standard Practice Handbook.

13.

Employment files of all persons transferred within the Delta corporation from August, 1981 to April 15, 1982.

14.

Any and all written correspondence between In-Flight Service Department and Manager - Equal Opportunity concerning Teddye Dugger.

Any and all written correspondence between the Reservations Department and the Manager of Equal Opportunity concerning Teddye Dugger.

_____

SONJA L. SALO
Counsel for Plaintiff

Suite 970, Sussex Place
148 International Boulevard
Atlanta, Georgia 30303
404/688-3085

STATE OF GEORGIA

COUNTY OF FULTON

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of the Plaintiff's Second and Continuing Request for Production of Documents, by depositing the same in the United States Mail, properly sealed and stamped.

This the 3 day of March, 1983.

SONJA L. SALO
Counsel for Plaintiff

Suite 970, Sussex Place
148 International Boulevard
Atlanta, Georgia 30303
404/688-3085

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

TEDDYE DUGGAR,	)	
	)	
Plaintiff,	)	CIVIL ACTION FILE
	)	
vs.	)	NO. C-89198
	)	
DELTA AIR LINES, INC.,	)	
	)	
	)	
Defendant.	)	

DEFENDANT'S RESPONSES AND OBJECTIONS TO PLAINTIFF'S SECOND AND CONTINUING REQUEST FOR PRODUCTION OF DOCUMENTS

COMES NOW Defendant, Delta Air Lines, Inc. ("Delta") and files the following responses to Plaintiff's Second and continuing Request for Production of Documents:

GENERAL OBJECTIONS

To the extent that any of the Plaintiff's Second Continuing Requests for Production seek information that is privileged or that is subject to the

attorney-work product doctrine, Delta objects to the production of such documents. Delta further objects to the production of any documents at the offices of counsel for Plaintiff. Delta will produce those documents as indicated below in its Responses to each Request at the General Offices of Delta Air Lines, Atlanta, Georgia.

Delta hereby incorporates by reference these General Objections into each of its responses to Plaintiff's 15 Requests.

1.

Delta objects to Plaintiff's request for any and all written memoranda from any department head within Delta Air Lines to the Delta Personnel Department in reference to job openings within the respective departments from August 1981 to April 15, 1982, on the

grounds that the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence, and that the production of such documents would be unduly burdensome and oppressive.

2.

Delta objects to Plaintiff's request for production of "Job Openings Bulletins" from August 1981 to April 15, 1982 on the grounds that the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. This Request is also objected to on the grounds that it is vague and ambiguous.

3.

Delta objects to Plaintiff's request for all bids submitted by employees for job openings from August 1981 to April 15, 1982 on the grounds that the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence, and that the production of such documents would be unduly burdensome and oppressive. Delta also objects on the grounds that as written the request is ambiguous and subject to numerous interpretations.

6.

Delta objects to Plaintiff's request for copies of any and all tests administered to applicants for employment or administered to employees seeking or under consideration for

transfer from August 1981 to April 15, 1982 on the grounds that the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence, and that the production of such documents would be unduly burdensome and oppressive. Delta will produce the requalification materials related to the Plaintiff's qualification as a Delta flight attendant.

7.

Delta agrees to make available to Plaintiff and her attorney, at Delta's General Offices, at a reasonable time to be determined by agreement of the parties, relevant, nonprivileged portions of Delta's personnel files on

the persons listed in Request No. 7 of Plaintiff's Second and Continuing Request for Production of Documents.

8.

Delta objects to Plaintiff's request for production of a copy of Delta's Affirmative Action Plan for the handicapped (a document required by Federal law) on the grounds that the documentation sought is irrelevant tot he subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. Delta further objects to the production of this documentation on the grounds that it is privileged and is not subject to discovery as a matter of public policy.

9.

Delta objects to Plaintiff's request for production of a list of all job openings with Delta Air Lines not otherwise listed under the Job Openings Bulletin from August 1981 to April 15, 1982 on the grounds that the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence. The request is objected to on the grounds that it would be unduly burdensome and oppressive to produce such documents. The Request as written is also objected to on the grounds that it is ambiguous.

10.

Delta objects to Plaintiff's request for production of any and all documentation reflecting criteria for

obtaining leave of absence for personal reasons or physical reasons on the grounds that the request is vague and overbroad; that much of the documentation sought is irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence; and further, that the production of such documentation would be unduly burdensome and oppressive. Delta agrees to make available to Plaintiff and her attorney, at Delta's General Offices at a reasonable time to be determined by agreement of the parties, those portions of Delta's Standard Practices which reflect criteria for obtaining leave of absence for personal or physical reasons.

11.

Delta agrees to make available to Plaintiff and her attorney at Delta's General Offices at a reasonable time to be determined by agreement of the parties, a copy of Delta's Flight Attendant Handbook.

12.

Delta objects to Plaintiff's request for production of the "Standard Practice Handbook" on the grounds that there is no such document. To the extent that Plaintiff seeks all of Delta's standard practices, Delta objects in that much of the documentation sought is irrelevant to the subject matter of this action and evidence. Delta has already produced substantial portions of its Standard Practices to Plaintiff.

13.

Delta objects to Plaintiff's request for employment files of all persons transferred within the Delta corporation from August 1981 to April 15, 1982 on the grounds that the documentation sought is irrelevant to the subject matter of this action; is not reasonably calculated to lead to the discovery of admissible evidence; and that the production of such documents would be unduly burdensome and oppressive. Delta also objects to this Request in that it does not define the term "transfer" and failing to do so, the Request is ambiguous. Delta has numerous types of inter-office and intra-office transfers, as well as inter-departmental transfers, and thus the Request is, among other things, ambiguous.

14.

There exists no written correspondence between the In-flight Service Department and the Manager-Equal Opportunity concerning Teddye Dugger.

15.

There exists no written correspondence between the Reservations Department and the Manager of Equal Opportunity concerning Teddye Dugger.

This 5th day of April, 1983.

ROGERS & HARDIN

By: _____

HUNTER R. HUGHES

ROGERS & HARDIN
A Partnership of
Professional Corporations
Thirty-Second Floor
101 Marietta Tower
Atlanta, Georgia 30335
(404) 522-4700

GREGORY L. RIGGS

DELTA AIR LINES, INC.
Law Department
Hartsfield Atlanta Int'l Airport
Atlanta, Georgia 30320
(404) 765-2611

Attorneys for Defendant
Delta Air Lines, Inc.

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this day mailed a copy of the foregoing Defendant's Response and Objections to Plaintiff's Second and Continuing Request for Production of Documents by depositing same in the United States mail, with adequate postage thereon and addressed as follows:

Sonja L. Salo, Esq.
Suite 970 - Sussex Place
148 International Boulevard
Atlanta, Georgia 30320

This 5th day of April, 1983.

ROGERS & HARDIN

By: _____

Hunter R. Hughes

Attorney for Defendant
Delta Air Lines, Inc.

Court of Appeals
of the State of Georgia
Atlanta, December 10, 1984

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

68534 Teddye Dugger v. Delta Air Lines, Inc. (C-89198)

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

Court of Appeals
of the State of Georgia
Clerk's Office
Atlanta, December 10, 1984

I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Alton Hawk, Clerk.

Clerk's Office
Supreme Court of Georgia
Atlanta, January 10, 1985

Case No. 41867 Dugger v. Delta Air Lines, Inc.

The Supreme Court today denied the writ of certiorari in this case.

All the justices concur, except Smith, J., not participating.

Very truly yours,

JOLINE B. WILLIAMS, Clerk